



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1555

Introduced 2/22/2007, by Rep. Edward J. Acevedo

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Insurance Code. In the Article concerning Public Insurance Adjusters, changes the definition of "Public Insurance Adjuster". Provides that no person may solicit or hold himself out to be in the business of adjusting insurance claims. Deletes provisions regarding the issuance of a Public Insurance Adjuster license. Provides that each Public Insurance Adjuster license shall contain the business address of the Public Insurance Adjuster and that the holder of license shall notify the Director of Insurance, in writing, of a change of business address within 30 days of the change. Provides that no person may engage in the business of adjusting insurance claims unless such person is licensed pursuant to the Article and registered with the Director. Provides that a Public Insurance Adjuster shall provide the insured with a document setting forth the scope, amount, and value of the damages prior to requesting the insured for authority to settling any loss. Provides that a Public Insurance Adjuster may not refer the insured to a contractor to perform fire restoration or repairs other other construction caused by the loss giving rise to the claim for which the Public Insurance Adjuster was retained. Provides that in all cases where the loss giving rise to the claim for which the Public Adjuster was retained arise from damage to a personal residence, the insurance proceeds shall be delivered to the named insured. Provides that neither a Public Insurance Adjuster nor any of his or her representatives must physically appear at the damaged premises during the first 3 business days following the loss-producing occurrence or the departure of the fire department or its representatives from the damaged premises, whichever is later. Provides certain limitations on the business ownership interests of Public Insurance Adjusters. Makes other changes.

LRB095 08568 KBJ 28751 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 512.52, 512.53, 512.54, 512.55, 512.57,
6 512.58, 512.59, 512.60, 512.61, and 512.64 as follows:

7 (215 ILCS 5/512.52) (from Ch. 73, par. 1065.59-52)

8 Sec. 512.52. Definitions. As used in this Article unless
9 the context clearly otherwise requires:

10 (a) "Adjusting insurance claims" means representing an
11 insured with an insurer for compensation, and while
12 representing that insured either negotiating values, damages,
13 or depreciation, or applying the loss circumstances to
14 insurance policy provisions.

15 (b) "Public Insurance Adjuster" means a person engaged in
16 the business of adjusting insurance claims who is licensed
17 pursuant to this Article.

18 (c) "Registered Firm" means a person registered with the
19 Director under Section 512.57.

20 (d) "Compensation" shall include, but need not be limited
21 to, the following:

22 1. any assignment of insurance proceeds or a percentage
23 thereof;

1 2. any agreement to make repairs for the amount of the
2 insurance proceeds payable;

3 3. assertion of any lien against insurance proceeds
4 payable.

5 (e) "Person" embraces both natural persons and business
6 entities of whatever type.

7 (Source: P.A. 84-335; 84-832.)

8 (215 ILCS 5/512.53) (from Ch. 73, par. 1065.59-53)

9 Sec. 512.53. License Required. (a) No person may engage in
10 the business of adjusting insurance claims, nor advertise,
11 solicit or hold himself out to be in the business of adjusting
12 insurance claims, solicit or hold himself out to be a Public
13 Insurance Adjuster, nor attempt to obtain a contract for Public
14 Adjusting services, unless licensed or registered in
15 accordance with the provisions of this Article, except that the
16 provisions of this paragraph do not apply to a person admitted
17 to the practice of law in this State, to a licensed agent
18 adjusting loss or damage under a policy within his control or
19 to a marine surveyor or average adjuster.

20 (b) In addition to any other penalty set forth in this
21 Article, any person violating paragraph (a) of this Section
22 shall be guilty of a Class A misdemeanor, and any person
23 misappropriating or converting any monies collected as a Public
24 Insurance Adjuster, whether licensed or not, shall be guilty of
25 a Class 4 felony.

1 (c) All contracts entered into by any person violating
2 subsection (a) of this Section are void and invalid.

3 (Source: P.A. 83-1362.)

4 (215 ILCS 5/512.54) (from Ch. 73, par. 1065.59-54)

5 Sec. 512.54. Application and Examination. (a) Each
6 application for a Public Insurance Adjuster license shall be
7 made on a form specified by the Director. The application shall
8 be signed by the applicant and shall contain the applicant's
9 declaration, under penalty of refusal, suspension or
10 revocation of the Public Insurance Adjuster license, that the
11 statements made in the application are true, correct and
12 complete to the best of the applicant's knowledge and belief.
13 Before approving the application, the Director shall be
14 satisfied that the applicant (1) is an individual at least 18
15 years of age, and (2) is competent, trustworthy and of good
16 business reputation.

17 (b) Applicants for a Public Insurance Adjuster licensee
18 shall pass a written examination. The examination shall
19 reasonably test the knowledge of the applicant concerning the
20 applicable insurance laws and rules and regulations of the
21 Director and the duties and responsibilities of a Public
22 Insurance Adjuster. All examinations provided for by this
23 Section shall be conducted under rules and regulations
24 prescribed from time to time by the Director, and the Director
25 may make such arrangements as may be appropriate, including

1 contracting with an outside testing service for administering
2 such examinations. Any charges assessed by any such testing
3 service for administering such examinations shall be paid
4 directly by the individual applicants.

5 Each person subject to an examination shall at the time of
6 request for examination enclose with the application a
7 non-refundable application fee made payable to the Director as
8 provided in Section 512.63, plus a separate remittance if
9 applicable made payable to the designated testing service for
10 the total of such fees as the testing service charges for each
11 of the various services being requested by the applicant. In
12 the event an applicant appears and fails to pass, such person
13 shall not be entitled to any refund and shall be required to
14 submit a new request for examination together with all of the
15 requisite fees before being rescheduled at a later date.

16 (c) Blank. ~~An applicant who becomes a resident of this~~
17 ~~State and who has filed with the Director certification by a~~
18 ~~public official having supervision of Public Insurance~~
19 ~~Adjusters in the prior state of residency evidencing that the~~
20 ~~applicant has passed a written examination and has held a~~
21 ~~public insurance adjuster license in good standing for the~~
22 ~~prior 24 months is not required to complete the examination~~
23 ~~required by paragraph (b). However, the Director may require~~
24 ~~the applicant to take that portion of the examination~~
25 ~~pertaining to Illinois law and rules and regulations of the~~
26 ~~Director.~~

1 (d) Blank. ~~The Director may issue a Public Insurance~~
2 ~~Adjuster license to any applicant who is not an Illinois~~
3 ~~resident without an examination only if (1) the applicant holds~~
4 ~~a like license from his state of residence, and (2) the~~
5 ~~applicant's state of residence accepts Illinois residents for~~
6 ~~licensing, and (3) the state in which the applicant resides~~
7 ~~requires no examination of Illinois resident Public Insurance~~
8 ~~Adjusters, and (4) the public official having supervision of~~
9 ~~Public Insurance Adjusters in the applicant's state of~~
10 ~~residence certifies that the applicant has passed a written~~
11 ~~examination.~~

12 (e) The Director may issue a Public Insurance Adjuster
13 license to any applicant who is not an Illinois resident ~~and~~
14 ~~who cannot meet the requirements of paragraph (d)~~ if the
15 applicant passes a written examination in Illinois.

16 (Source: P.A. 84-832.)

17 (215 ILCS 5/512.55) (from Ch. 73, par. 1065.59-55)

18 Sec. 512.55. Public Insurance Adjuster license. (a) The
19 Director shall issue a Public Insurance Adjuster license to an
20 applicant who has:

21 (1) met the requirements of Section 512.54; and

22 (2) paid the fee as set forth in Section 512.63; and

23 (3) filed with the Director a bond as prescribed in Section
24 512.56.

25 (b) Every Public Insurance Adjuster license shall remain in

1 effect for one year from the date of its issuance.

2 (c) Each Public Insurance Adjuster license shall contain
3 the name, business address, resident address and personal
4 identification number of the Public Insurance Adjuster, the
5 date of issue, general conditions relative to expiration or
6 termination and any other information the Director considers
7 proper.

8 (d) The holder of a Public Insurance Adjuster license shall
9 notify the Director, in writing, of a change of either business
10 or residence address within 30 days of such change.

11 (e) Each Public Insurance Adjuster license shall remain in
12 effect as long as the holder of the license maintains in force
13 and effect the bond required by Section 512.56 and pays the
14 annual fee required by Section 512.63 by the date due as
15 prescribed by the Director, unless the license is revoked or
16 suspended pursuant to Section 512.61.

17 The Department may refuse to issue or may suspend the
18 license of any person who fails to file a return, or to pay the
19 tax, penalty or interest shown in a filed return, or to pay any
20 final assessment of tax, penalty or interest, as required by
21 any tax Act administered by the Illinois Department of Revenue,
22 until such time as the requirements of any such tax Act are
23 satisfied.

24 (Source: P.A. 84-221; 84-832.)

25 (215 ILCS 5/512.57) (from Ch. 73, par. 1065.59-57)

1 Sec. 512.57. Registered Firms. (a) No person may engage in
2 the business of adjusting insurance claims ~~employ one or more~~
3 ~~Public Insurance Adjustors in their professional capacity,~~
4 ~~other than for the purpose of using their professional services~~
5 ~~to negotiate or adjust such person's own losses and insurance~~
6 ~~claims,~~ unless such person is licensed pursuant to this Article
7 and registered with the Director under subsection (b) of this
8 Section.

9 No Public Insurance Adjuster may form or participate in any
10 association, partnership or other business entity ~~with any~~
11 ~~other Public Insurance Adjuster~~ for the purpose of engaging in
12 the business of adjusting insurance claims, unless such
13 business entity is registered with the Director under
14 subsection (b) of this Section.

15 (b) To become a Registered Firm, a person must submit to
16 the Director an application, on a form specified by the
17 Director, and the fee required by Section 512.63. The Director
18 may require any documents reasonably necessary to verify the
19 information contained in the application.

20 (c) Each Registered Firm must notify the Director, in
21 writing, of any change in its business and residence address
22 within 30 days of such change.

23 (d) Each Registered Firm must notify the Director of each
24 Public Insurance Adjuster who is a member, officer, director or
25 employee of the Registered Firm, and report any changes in such
26 status of any such Public Insurance Adjuster to the Director

1 within 30 days thereof.

2 (e) Each Registered Firm shall appoint one or more Public
3 Insurance Adjusters who is an officer, director or member of
4 the Firm to be responsible for the compliance of the Registered
5 Firm with the laws of this State and the rules and regulations
6 of the Director. The Registered Firm shall be responsible for
7 the actions of its officers, directors, members and employees.

8 (f) Each Registered Firm which, for any of the causes
9 listed in Section 512.61, terminates its relationship with a
10 Public Insurance Adjuster who is an officer, director, employee
11 or member of the Registered Firm shall notify the Director, in
12 writing, within 30 days of such termination of the specific
13 reasons for such termination. The Registered Firm shall provide
14 the Director with information, documents, records or
15 statements pertaining to the termination. Any materials
16 provided may be used by the Director in any action taken
17 pursuant to Section 512.62. There shall be no liability on the
18 part of, nor any cause of action against, the Director or the
19 Registered Firm, or any authorized representative of either,
20 for any statement made or materials provided pursuant to this
21 paragraph.

22 (g) The Director shall terminate any registration which
23 does not comply with the requirements of this Article.

24 (Source: P.A. 84-832.)

25 (215 ILCS 5/512.58) (from Ch. 73, par. 1065.59-58)

1 Sec. 512.58. Rate Schedules and Contract Forms. (a) A
2 Public Insurance Adjuster shall not provide services until a
3 written contract with the insured has been executed, on a form
4 filed with and approved by the Director. At the option of the
5 insured, any such contract which is executed within 5 business
6 days after conclusion of the loss-producing occurrence shall be
7 voidable for 10 days after execution. The insured may void the
8 contract by notifying the Public Insurance Adjuster in writing
9 by (i) registered or certified mail, return receipt requested,
10 to the address shown on the contract; or (ii) personally
11 serving the notice on the Public Insurance Adjuster.

12 (b) The written contract required by paragraph (a) shall
13 constitute the entire agreement between the Public Insurance
14 Adjuster and the insured. A copy of the contract shall be given
15 to the insured when the contract is executed. Such contract
16 forms may not include any hold harmless agreement which
17 provides indemnification to the Public Insurance Adjuster by
18 the insured for liability resulting from the Public Insurance
19 Adjuster's negligence, nor any power-of-attorney by which the
20 Public Insurance Adjuster can act in the place and instead of
21 the insured.

22 (Source: P.A. 83-1362.)

23 (215 ILCS 5/512.59) (from Ch. 73, par. 1065.59-59)

24 Sec. 512.59. Performance standards applicable to all
25 Public Insurance Adjusters. (a) A Public Insurance Adjuster may

1 not represent that he is a representative of an insurance
2 company, a fire department, or the State of Illinois, or that
3 he is a fire investigator, or that his services are required
4 for the insured to submit a claim to the insured's insurance
5 company, or that he may provide legal advice or representation
6 to the insured. A Public Insurance Adjuster may represent that
7 he has been licensed by the State of Illinois.

8 (b) A Public Insurance Adjuster may not agree to any loss
9 settlement without the insured's knowledge and consent and
10 shall provide the insured with a document setting forth the
11 scope, amount, and value of the damages prior to requesting the
12 insured for authority to settling any loss.

13 (c) A Public Adjustor or Public Adjusting Firm shall not
14 have any interest in a construction or contracting firm. The
15 Public Insurance Adjuster may not refer the insured to a
16 contractor to perform fire restoration or repairs other other
17 construction caused by the loss giving rise to the claim for
18 which the Public Insurance Adjuster was retained. If the Public
19 Insurance Adjuster refers the insured to a contractor, the
20 Public Insurance Adjuster warrants that all work will be
21 performed in a workmanlike manner and conform to all statutes,
22 ordinances and codes. Should the work not be completed in a
23 workmanlike manner, the Public Insurance Adjuster shall be
24 responsible for any and all costs and expense required to
25 complete or repair the work in a workmanlike manner.

26 (d) In all cases where the loss giving rise to the claim

1 for which the Public Adjuster was retained arise from damage to
2 a personal residence, the insurance proceeds shall be delivered
3 to the named insured. Where proceeds paid by an insurance
4 company are paid jointly to the insured and the Public
5 Insurance Adjuster, the insured ~~Public Insurance Adjuster~~
6 shall release such portion of the proceeds which are due the
7 Public Insurance Adjuster insured within 30 calendar days after
8 the insured's ~~Public Insurance Adjuster's~~ receipt of the
9 insurance company's check, money order, draft, or release of
10 funds. If the proceeds are not so released to the insured
11 within 30 calendar days, the insured ~~Public Insurance Adjuster~~
12 shall provide the Public Insurance Adjuster insured and the
13 Illinois Department of Insurance with a written explanation of
14 the reason for the delay.

15 (e) Neither a ~~A~~ Public Insurance Adjuster, nor any
16 representative of a Public Insurance Adjuster must physically
17 appear at the damaged premises or ~~may not~~ propose or attempt to
18 propose to any person that the Public Insurance Adjuster
19 represent that person during the first 3 business days
20 following the loss-producing occurrence or the departure of the
21 fire department or its representatives from the damaged
22 premises, whichever is later. ~~while a loss-producing~~
23 ~~occurrence is continuing nor while the fire department or its~~
24 ~~representatives are engaged at the damaged premises nor between~~
25 ~~the hours of 7:00 p.m. and 8:00 a.m..~~

26 (f) A Public Insurance Adjuster must ~~may~~ not advance money

1 or any valuable consideration, ~~except emergency services or the~~
2 ~~commencement of repairs,~~ to an insured pending adjustment of a
3 claim.

4 (g) A Public Insurance Adjuster must ~~may~~ not provide legal
5 advice or representation to the insured, or engage in the
6 unauthorized practice of law.

7 (h) A Public Insurance Adjuster must not have an ownership
8 interest in any company that performs fire restoration or
9 repairs as a regular part of its business operations, including
10 temporary board-up of doors, windows, and other openings in
11 fire damaged premises or any company that has an ownership
12 interest in any such company.

13 (Source: P.A. 84-335.)

14 (215 ILCS 5/512.60) (from Ch. 73, par. 1065.59-60)

15 Sec. 512.60. Maintenance of records. (a) All Public
16 Insurance Adjusters shall maintain a complete record of each of
17 their transactions as a Public Insurance Adjuster. The records
18 required by this Section shall include:

19 (1) name of the insured;

20 (2) date, location and amount of loss;

21 (3) copy of the contract between the Public Insurance
22 Adjuster and insured;

23 (4) name of the insurer, amount, expiration date and number
24 of each policy carried with respect to the loss;

25 (5) itemized statement of the insured's recoveries;

1 (6) name of the Public Insurance Adjuster who executed the
2 contract; ~~and~~

3 (7) name of the attorney representing the insured, if
4 applicable, and the name of the representative of the insurance
5 company; and -

6 (8) copy of the statement provided to the insured
7 explaining the amount and value of the damages to the insured
8 premises, the amount of insurance proceeds recovered from the
9 insured, and the amount and values of all expenses incurred to
10 adjust the claim and the amount and value of the Public
11 Insurance Adjuster's fees and charges.

12 (b) Records shall be maintained for at least three years
13 after the termination of the transaction with an insured and
14 shall be open to examination by the Director at any time.

15 (c) A Public Insurance Adjuster shall not divulge
16 information regarding any insured without written consent from
17 the insured, except that the Public Insurance Adjuster may
18 divulge such information to an insurance company or its
19 representative which insures the insured, to the Department of
20 Insurance, or upon a court order or an Internal Revenue Service
21 subpoena.

22 (d) Where a Public Insurance Adjuster is engaged or
23 employed by a Registered Firm, the records required by this
24 Section may be maintained by such Registered Firm on behalf of
25 the Public Insurance Adjuster.

26 (Source: P.A. 84-335.)

1 (215 ILCS 5/512.61) (from Ch. 73, par. 1065.59-61)

2 Sec. 512.61. License suspension, revocation or denial. (a)
3 Any license issued under this Article may, after notice to the
4 licensee and hearing as provided by Section 402, be suspended
5 or revoked, and any application for a license may be denied, if
6 the Director finds that the holder of or applicant for a
7 license has:

8 (1) willfully violated any provision of this Code or any
9 rule or regulation promulgated by the Director; or

10 (2) intentionally made a material misstatement in an
11 application for a license as a Public Insurance Adjuster; or

12 (3) obtained or attempted to obtain a license as a Public
13 Insurance Adjuster through misrepresentation or fraud; or

14 (4) misappropriated, converted to his own use or improperly
15 withheld money due others; or

16 (5) intentionally misrepresented the terms of any
17 insurance policy; or

18 (6) used fraudulent, coercive or dishonest practices, or
19 demonstrated incompetence, untrustworthiness or financial
20 irresponsibility in the transaction of business as a Public
21 Insurance Adjuster; or

22 (7) been convicted of any a felony or misdemeanor involving
23 dishonesty or fraud, unless the individual demonstrates to the
24 Director sufficient rehabilitation to warrant the public
25 trust; or

1 (8) knowingly transacted the business of a Public Insurance
2 Adjuster in conjunction with an individual who was not licensed
3 at the time; or

4 (9) failed to appear without reasonable cause or excuse in
5 response to a subpoena lawfully issued by the Director; or

6 (10) a license as a Public Insurance Adjuster suspended or
7 revoked or an application denied in any other state, district,
8 territory or province on a ground similar to one of the grounds
9 stated in this Section; or

10 (11) failed to comply with or violated any of the standards
11 set forth in Section 512.59; or

12 (12) failed to maintain the records required by Section
13 512.60; or

14 (13) engaged in the unauthorized practice of law.

15 (b) Denial of an application pursuant to this Section shall
16 be by written notice served upon the applicant by certified or
17 registered mail sent to the address specified in the
18 application. The applicant may request a hearing within 30 days
19 from the date of mailing as provided in Section 402.

20 (c) Upon notification of the issuance of an order
21 suspending or revoking a Public Insurance Adjuster's license,
22 the licensee or other person having possession or custody of
23 such license shall promptly deliver it to the Director in
24 person or by mail. The Director shall publish the name of each
25 Public Insurance Adjuster whose license is suspended or
26 revoked, after such suspension or revocation becomes final, in

1 a manner designed to notify interested insurance companies and
2 other persons.

3 (d) Any individual whose Public Insurance Adjuster's
4 license is revoked or whose application is denied pursuant to
5 this Section shall be ineligible to apply for a Public
6 Insurance Adjuster's license for 5 ~~2~~ years. A suspension
7 pursuant to this Section may be for any period of time up to 5 ~~2~~
8 years.

9 (Source: P.A. 84-335; 84-832.)

10 (215 ILCS 5/512.64) (from Ch. 73, par. 1065.59-64)

11 Sec. 512.64. Injunctive Relief. Any person who acts as or
12 holds himself out to be either engaged in the business of
13 adjusting insurance claims or a Public Insurance Adjuster
14 without holding a valid and current Public Insurance Adjuster's
15 license ~~to do so~~ is hereby declared to be inimical to the
16 public welfare and to constitute a public nuisance. The
17 Director may report such practice to the Attorney General of
18 the State of Illinois, whose duty it is to apply forthwith by
19 complaint on relation of the Director in the name of the people
20 of the State of Illinois, as plaintiff, for injunctive relief
21 in the circuit court of the county where such practice occurred
22 to enjoin such person from engaging in such practice; and, upon
23 the filing of a verified petition in such court, the court, if
24 satisfied by affidavit or otherwise that such person has been
25 engaged in such practice without a valid and current license to

1 do so, may enter a temporary restraining order without notice
2 or bond, enjoining the defendant from such further practice. A
3 copy of the verified complaint shall be served upon the
4 defendant and the proceedings shall thereafter be conducted as
5 in other civil cases. If it is established that the defendant
6 has been or is engaged in such unlawful practice, the court may
7 enter an order or judgment perpetually enjoining the defendant
8 from further such practice. In all proceedings hereunder the
9 court, in its discretion, may apportion the costs among the
10 parties interested in the action, including cost of filing the
11 complaint, service of process, witness fees and expenses, court
12 reporter charges and reasonable attorney fees. In case of
13 violation of any injunctive order entered under the provisions
14 of this Section, the court may try and punish the offender for
15 contempt of court. Such injunction proceedings shall be in
16 addition to, and not in lieu of, all penalties and other
17 remedies.

18 (Source: P.A. 84-548.)

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